IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 5TH FEBRUARY 2007 / 16TH MAGHA 1928

Crl.MC.No. 94 of 2007()

CC.1175/2005 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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PETITIONER: PETITIONER/ACCUSED NO.6

ABDUL RAHIMAN, S/O.MOHAMMADKUNJI,
MANGATTU HOUSE, UDUMA DESOM, BARA VILLAGE,
HOSDURG TALUK.

BY ADV. SRI.VINOD VALLIKAPPAN

RESPONDENTS: RESPONDENTS

STATE OF KERALA REP. BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 94 of 2007

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Dated this the 5th day of February, 2007

O R D E R

The petitioner is the 7th accused out of 11 accused persons, who face allegations, inter alia, under Sections 120B and 420 I.P.C. Cognizance has been taken on the basis of the final report submitted by the police after due investigation. The petitioner had appeared before the learned Magistrate. Charges have not been framed so far. According to the petitioner, the allegations against him are absolutely unjustified.

2. The crux of the allegations against him is that he is a party to a conspiracy to commit offences punishable, inter alia, under Section 409 and 420 I.P.C. The counsel contends that as against the 7th accused reliance was placed on the statement of the 37th witness, who alleged that the petitioner is a Partner of the firm, which was involved in the commission of the offences. According to the petitioner, there is no other allegation whatsoever against him. He further contends that the establishment in question was not a partnership at all and the allegation that he is a partner in the

establishment is also incorrect. In these circumstances he contends that the proceedings against him are liable to be quashed by invoking the powers under Section 482 Cr.P.C.

3. I shall scrupulously avoid any detailed discussion on the acceptability of the allegations raised or the credibility of the data relied on by the prosecution. Suffice it to say that on an anxious consideration of all the relevant inputs, I am of the opinion that the learned Magistrate must at the stage of Section 239 Cr.P.C. be directed to pointedly apply his mind and take a decision under Section 239/240 Cr.P.C. If the petitioner is entitled for a discharge, of course, the Magistrate has to pass a detailed order. If he is not entitled to a discharge, charges are liable to be framed. The charges framed would reveal to the court the basis on which the petitioner is arrayed as an accused. A detailed order may not then be necessary. I have no reason to assume that the learned Magistrate would not consider the petitioner's claim for discharge under Section 239 Cr.P.C. in accordance with law.

4. The mere fact that an accused may be entitled for a discharge/acquittal is by itself not a reason to invoke the powers of this Court under Section 482 Cr.P.C. I am not persuaded to agree that any

compelling reasons exist in this case, which would justify invocation of the powers under Section 482 Cr.P.C.

5. This Crl.M.C. is hence dismissed. But I reiterate that the petitioner is entitled to claim discharge and the learned Magistrate must consider such claim for discharge at the stage of Section 239/240 Cr.P.C.

(R. BASANT)
Judge

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